

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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725 EATERY CORP., etc., *et ano.*, :
Plaintiffs,

:
- against -

Civil Action No.
02 CV 4431 (LJL)

THE CITY OF NEW YORK, et al.,
Defendants.

:

X

**PLAINTIFFS 725 EATERY CORP. AND 689 EATERY CORP.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT ON CHALLENGES TO
MANDATORY TERMINATION PROVISIONS
AND ALTERNATIVE MOTION FOR PARTIAL SUMMARY JUDGMENT ON
PERMITTING AND VESTING PROVISIONS**

PLEASE TAKE NOTICE that Plaintiffs 725 Eatery Corp. and 689 Eatery Corp. (“Plaintiffs”), by and through counsel, hereby move this Court, pursuant to Fed. R. Civ. P. 56, for an order of Partial Summary Judgment, consisting of a declaration that the mandatory termination provisions of NYC Zoning Resolution (“ZR”) §§ 52-77 and 72-41 are facially unconstitutional, in violation of the Free Speech and Equal Protection guarantees of the First and Fourteenth Amendments to the United States Constitution, and a permanent injunction preventing their enforcement by Defendant and/or its officers, agents, attorneys and departments against these Plaintiffs or any of their officers, managers, shareholders, members, agents, employees, performers, landlords, tenants, or anyone else in connection with Plaintiffs’ Manhattan premises at 725 7th Ave., New York, New York and 689 8th Ave., New York, New York.

IN THE ALTERNATIVE, and only in the event Plaintiffs' above-described motion is denied, Plaintiffs move the Court for an order of Partial Summary Judgment consisting of a declaration that the City of New York's permitting and vesting provisions applicable to "adult establishment" uses (as described in greater detail in Plaintiffs Memorandum of Law) are facially unconstitutional, in violation of the Free Speech and Equal Protection guarantees of the First and Fourteenth Amendments to the United States Constitution. And, because such provisions deny Plaintiffs a "reasonable opportunity" to relocate their businesses, Plaintiffs move for a permanent injunction preventing enforcement of the mandatory termination provisions of ZR §§ 52-77 and 72-41 against Plaintiffs or any of their officers, managers, shareholders, members, agents, employees, performers, landlords, tenants, or anyone else in connection with Plaintiffs' Manhattan premises at 725 7th Ave. and 689 8th Ave., both in New York, New York, to last until such time, if ever, as the City should successfully move to vacate that injunction upon proof that it has cured all the constitutional deficiencies in its scheme for permitting and vesting which will be identified in the Court's declaratory judgment.

These motions are supported by each of the following:

- (1) Joint Statement of Material Facts (filed in all four actions on May 23, 2022).
- (2) Joint Request and Stipulations Regarding the Taking of Judicial Notice (filed in all four actions on May 9, 2022).
- (3) Supplemental Joint Statement of Facts (filed in all four actions on September 8, 2022).

- (4) Club Plaintiffs' Memorandum of Law in Support of Partial Summary Judgment Motions (filed contemporaneously herewith);
- (5) Declaration of Michael Berzak in Support of Club Plaintiffs' Motion for Partial Summary Judgment (filed contemporaneously herewith);
- (6) Declaration of Keith Warech in Support of Club Plaintiffs' Motion for Partial Summary Judgment (filed contemporaneously herewith);
- (7) Plaintiffs previously filed Plaintiffs' Joint Appendix (PJA) (a 17-volume document filed herein on November 21, 2018) and Plaintiffs' Joint Reply Appendix (PJRA) (a four-volume document filed herein on March 15, 2019).

This motion will also be based on any additional papers or responses filed hereafter in support of this motion, as well as any argument or presentation that may be made at any hearing on this motion.

Respectfully submitted,

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